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10/539,433	10/20/2005	Craig Bruce	AL-0004	8658
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			EXAMINER	
			WILSON, JOHN J	
			ART UNIT	PAPER NUMBER
			3732	
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			07/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,433	Applicant(s) BRUCE, CRAIG	
	Examiner John J. Wilson	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. While the disclosure and drawings show a connecting member 28 and clasps 30, 32, there is no teaching that the connecting member is "extending from one of the clasps" as now claimed, as such, this language is held to be improper new matter.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hale (3584620). Hale shows a cosmetic appliance for resting on the gums including a tooth clasp 10, 12, Figs. 4 and 5. The shown clasps are inherently capable of being used with a molar tooth depending on the intended use of the device, and therefore, all of the actual claimed structure being shown, the intended use with a molar is given no patentable weight. The shown structure is also inherently capable of being used

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between the cuspid and molar, and as such, all of the actual claimed structure being shown, the intended use with a molar is given no patentable weight. As to claim 3, the limitation of this claim refers to a process of making the structure, all of the actual claimed structure being shown, the process of making is given no patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hale (3584620) in view of Laffin (2568197). Hale shows the structure as described above, however, does not show using a color to match the gums. Laffin teaches using a color to match the gums, column 3, lines 61-62. It would be obvious to one of ordinary skill in the art to modify Acquanetta to include using a color that matches the gums in order to improve aesthetics.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale (3584620). Hale shows a cosmetic appliance for facial enhancement having first and second components, the right and left sides of the device as shown, a connecting member between the right and left sides as shown at 1 and 1a, and clasps 10, 12 that are secured to each side of the mouth, column 2, lines 30-37. That the clasps can be

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used with the molar teeth is an obvious matter of choice in the location and intended use of the shown structure to one of ordinary skill in the art. That the first and second components can be spaced from the teeth in use would be obvious to the skilled artisan in view of the showing of the clasps extending away from the teeth in the drawings and in the location of the elements in order to reduce wrinkles in the desired locations. As to claim 16, the specific material used for the clasps is an obvious matter of choice in well known non-critical materials used to the mouth to one of ordinary skill in the art.

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale (3584620) in view of Laffin (2568197). Hale shows the structure as described above, however, does not show using a elastomeric material or color. Laffin teaches using elastomeric material, column 2, lines 57-58. As to claim 12, see teaching of color, column 3, lines 61-62, and shows indentations 11. It would be obvious to one of ordinary skill in the art to modify Hale to include the use of elastomeric material and to provide color as shown by Laffin in order to make use of known materials and to match the gum color. The specific manner in which the shown structure is intended to align with the neck of a tooth is intended use. All the actual claimed structure shown the specific alignment with the teeth is merely intended use, and as such, is not given patentable weight.

Claims 9-11, 13-15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale (3584620) in view of Albert et al (5951291). Hale does not

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show using a flexible plastic or an acrylic or a silicone material. Albert teaches using a flexible plastic, acrylic and silicone, column 5, lines 36-50. It would be obvious to one of ordinary skill in the art to modify Hale to include the materials as shown by Albert in order to make use of materials known to be compatible with use in the mouth. As to claims 13-15, 18 and 19, the specific material used is an obvious matter of choice in well known non-critical materials used to the mouth to one of ordinary skill in the art.

Claim 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale (3584620) in view of Kittelsen (5879155). Hale shows the structure as described above, however, they do not show a wire connecting left and right sides. Kittelsen shows a device for use in the mouth using a wire 86 for connecting left and right sides of the device, and teaches using titanium, column 5, lines 58-65. It would be obvious to one of ordinary skill in the art to modify Hale to include a connecting wire as shown by Kittelsen in order to position the device only in the desired regions of the mouth. The specific type of titanium used is an obvious matter of choice in known alloys to the skilled artisan.

Claim Objections

In claim 1, line 2, the language "rests on" could be construed to be improperly claiming anatomy in combination with the prosthesis. Applicant should use inferential language such as "for resting on" in order to make clear that human anatomy is not being claimed.

Response to Arguments

Applicant's arguments filed May 9, 2007 have been fully considered but they are not persuasive. Hale does show a connecting member that meets the claim language as pointed out above, and the use of a wire would be obvious in view of the applied combination. The use of molar clasps is inherent or obvious for the reasons stated above. The materials used are obvious for the reasons stated above and that Hale may hold on to gums does not obviate the teaching of clasps.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez, can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***/John J Wilson/
Primary Examiner
Art Unit 3732***

jw
July 6, 2007